

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JORGE GONZALEZ,

Plaintiff,

v.

SGT. KUSSMAUL, DR. HOEM, C.O.
BARR, DR. AMARANTE, and BOB
VICKERY,

Defendants.

ORDER

13-cv-702-wmc

Plaintiff Jorge Gonzalez proceeds *pro se* in this case on claims that Wisconsin Secure Program Facility (“WSPF”) staff (1) violated his First Amendment rights by restricting Gonzalez’s use of the telephone and (2) were deliberately indifferent to Gonzalez’s mental health needs. Defendants filed their answer on February 3, 2014, and a pretrial conference was held before the magistrate judge on February 25, 2014. Now, Gonzalez has moved to dismiss his case without prejudice so he can pursue it at another time.

When a motion for dismissal is filed after a defendant has filed an answer, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff “only upon order of the court and upon such terms and conditions as the court deems proper.” Because the defendants have been required to defend this action, the court will grant Gonzalez’s motion for voluntary dismissal only on the condition that the defendants agree to a dismissal without prejudice. If defendants do not agree to a dismissal without prejudice,

Gonzalez will have an opportunity to withdraw his motion or agree to dismissal with prejudice.

ORDER

IT IS ORDERED that defendants may have until September 12, 2014, in which to advise plaintiff Gonzalez and the court whether they agree to Gonzalez's request for dismissal of this action without prejudice. If defendants do not agree to such a dismissal, Gonzalez may have until September 22, 2014, in which to either (1) withdraw his motion to dismiss or (2) advise the court that he has no objection to a dismissal of this case with prejudice. If by September 22, 2014, Gonzalez fails to request withdrawal of his motion to dismiss this case, then the clerk of court is directed to enter judgment dismissing this case with prejudice.

Entered this 4th day of September, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge